

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

| | | |
|----------------------------------|---|----------------------------|
| LOIS ALT, d/b/a EIGHT IS ENOUGH, |) | |
| |) | |
| Plaintiff, |) | Case No. 2:12-CV-00042-JPB |
| |) | |
| v. |) | |
| |) | |
| UNITED STATES ENVIRONMENTAL |) | |
| PROTECTION AGENCY, |) | ANSWER TO COMPLAINT |
| |) | |
| Defendant. |) | |
| |) | |

THE UNITED STATES' ANSWER TO THE COMPLAINT

The United States Environmental Protection Agency (the “United States”), in answer to the Complaint brought by Lois Alt (“Plaintiff”) responds as follows:

INTRODUCTION

1. To the extent the first sentence of this paragraph characterizes Plaintiff’s motivation for bringing suit, no response is required. In regard to the remainder of that sentence, the United States admits that EPA issued a document entitled “Findings of Violation and Order for Compliance” (“the Order”) pursuant to the Clean Water Act; otherwise, that document speaks for itself. In regard to the second sentence of this paragraph, the United States admits that a copy of the Order was attached to the Complaint as Exhibit A; however, that copy was incomplete in that not all of the attachments to the Order were included in Exhibit A. The third and fourth sentences of this paragraph characterize and summarize the contents of the Order, which speaks for itself.

2. In regard to the first sentence of this paragraph, the United States admits that EPA employee Ashley Toy conducted an inspection of Plaintiff’s farm (“Eight is Enough”) on June

17, 2011. Any remaining allegations in the first sentence of this paragraph assert legal conclusions, to which no response is required. The United States admits the allegations set forth in the second sentence of this paragraph. The third sentence of this paragraph summarizes and excerpts text from the inspection report attached to the Complaint as Exhibit B, which speaks for itself.

3. To the extent the first sentence of this paragraph purports to summarize the Order, that document speaks for itself; to the extent the allegations in this sentence are intended to go beyond the contents of the Order, the United States denies any remaining allegations in this sentence. The second sentence of this paragraph asserts a legal conclusion, to which no response is required. To the extent the third sentence of this paragraph purports to summarize the Order, that document speaks for itself; to the extent the allegations in this sentence are intended to go beyond the contents of the Order, the United States denies any remaining allegations in the sentence.

4. This paragraph summarizes the relief sought by Plaintiff; accordingly, no response is required.

JURISDICTION AND VENUE

5. This paragraph asserts a legal conclusion, to which no response is required.

6. The United States admits that Plaintiff's facility is located in Hardy County, West Virginia; otherwise, this paragraph asserts a legal conclusion to which no response is required.

PARTIES

7. The United States admits the allegation set forth in the first and second sentences of this paragraph. The United States is without knowledge or information sufficient to form a belief regarding the truth of the allegations in the third sentence of this paragraph.

8. The United States admits the allegations set forth in this paragraph.

STATUTORY AND REGULATORY BACKGROUND

The Administrative Procedure Act

9. This paragraph consists of quotations from a statute, which speaks for itself. To the extent that this paragraph also asserts legal conclusions, no response is required.

10. This paragraph consists of quotations from a statute, which speaks for itself. To the extent that this paragraph also asserts legal conclusions, no response is required.

11. This paragraph asserts a legal conclusion, to which no response is required.

12. This paragraph asserts a legal conclusion, to which no response is required.

The Clean Water Act

13. This paragraph quotes and purports to summarize the requirements of a statute, the Clean Water Act, which speaks for itself.

14. This paragraph quotes and purports to summarize the requirements of a statute, the Clean Water Act, which speaks for itself.

15. This paragraph quotes and purports to summarize the requirements of a statute, the Clean Water Act, which speaks for itself.

16. The first sentence of this paragraph purports to summarize the requirements of a statute, the Clean Water Act, which speaks for itself. The second sentence of this paragraph quotes and purports to summarize EPA regulations, which speak for themselves.

17. To the extent this paragraph asserts a legal conclusion, no response is required. To the extent Plaintiff intends to make a factual allegation in this paragraph, the United States is without knowledge or information sufficient to form a belief as to the truth of the statement in this paragraph because it is overly vague.

18. This paragraph quotes and purports to summarize EPA regulations, which speak for themselves.

19. This paragraph quotes and purports to summarize EPA regulations, which speak for themselves.

20. The first section of this paragraph, as well as sub-paragraphs a and b and the first sentence of sub-paragraph c, quote and purport to summarize EPA regulations, which speak for themselves. In regard to the last sentence of sub-paragraph c, the United States admits that poultry farms often include the areas and structures listed; otherwise, the United States is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this sentence.

21. The United States admits that, effective May 10, 1982, it authorized the State of West Virginia to implement the NPDES permit program in that state. Otherwise, this paragraph purports to summarize the contents of a document, which speaks for itself.

PLAINTIFF'S FACTUAL ALLEGATIONS

Background on the Farm

22. In regard to the first sentence of this paragraph, the United States admits, based on information and belief, that the Plaintiff's facility includes eight poultry-raising houses, and ancillary structures for storing litter, bedding material, feed, compost, and equipment. The United States is without knowledge or information sufficient to form a belief as to the truth of any remaining allegations in the first sentence, as well as the allegations in the second sentence. The United States admits the allegations in the third and fourth sentences of this paragraph.

23. The United States admits the allegations in the first sentence of this paragraph.

The second sentence of this paragraph asserts a legal conclusion, to which no response is required. The United States admits the remaining allegations in this paragraph.

24. The United States is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

25. The United States is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

26. The United States is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

27. The United States is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

28. The United States admits the allegation in the first sentence of this paragraph.

The United States is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph.

EPA's Inspection and Compliance Order

29. Admitted.

30. Admitted.

31. This paragraph quotes and purports to summarize the Order, which speaks for itself.

32. This paragraph quotes and purports to summarize the Order, which speaks for itself.

33. This paragraph purports to summarize the Order, which speaks for itself.

34. This paragraph quotes and purports to summarize the Order, which speaks for itself.

35. This paragraph quotes and purports to summarize the Order, which speaks for itself.

36. Admitted.

37. The United States admits the first sentence of this paragraph. The second sentence of this paragraph purports to summarize a letter from Plaintiff's attorney to EPA, which speaks for itself.

PLAINTIFF'S DECLARATORY RELIEF ALLEGATIONS

38. This paragraph states only that Plaintiff realleges and reincorporates the allegations contained in previous paragraphs; accordingly, no response is required.

39. This paragraph asserts a legal conclusion, to which no response is required.

40. The first sentence of this paragraph asserts a legal conclusion, to which no response is required. The United States is without knowledge or information sufficient to form a belief as to the truth of the allegation in the second sentence of this paragraph.

41. This paragraph asserts a legal conclusion, to which no response is required.

42. The United States is without knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of this paragraph. The remaining sentences assert legal conclusions, to which no response is required.

43. The first sentence of this paragraph asserts legal conclusions, to which no response is required. The United States admits the allegation in the second sentence of this paragraph.

44. The first two sentences of this paragraph assert legal conclusions, to which no response is required. To the extent the last sentence of this paragraph purports to characterize EPA's legal interpretation of the requirements of the Clean Water Act, no response is required. The United States denies any remaining allegations in the last sentence of this paragraph.

45. This paragraph asserts legal conclusions, to which no response is required.
46. This paragraph asserts legal conclusions, to which no response is required.
47. This paragraph asserts legal conclusions, to which no response is required.
48. This paragraph asserts legal conclusions, to which no response is required.
49. This paragraph asserts a legal conclusion, to which no response is required.

PLAINTIFF'S FIRST CLAIM FOR RELIEF

(Violation of the APA)

50. This paragraph states only that Plaintiff realleges and reincorporates the allegations contained in previous paragraphs; accordingly, no response is required.

51. This paragraph asserts legal conclusions, to which no response is required.
52. This paragraph asserts legal conclusions, to which no response is required.
53. This paragraph asserts legal conclusions, to which no response is required.

PLAINTIFF'S PRAYER FOR RELIEF

The United States denies that Plaintiff is entitled to any of the relief requested in her Prayer for Relief.

THE UNITED STATES' GENERAL DENIAL

The United States denies any allegation in the Complaint not specifically admitted herein.

THE UNITED STATES' DEFENSES

Without limiting or waiving any defenses available to it, the United States hereby asserts the following defense:

1. Plaintiffs have failed to state a claim upon which relief may be granted.

RESERVATION OF RIGHTS

The United States reserves the right to seek to amend its Answer by adding additional defenses as additional information is obtained through further investigation or discovery.

THE UNITED STATES' REQUEST FOR RELIEF

WHEREFORE, the United States respectfully requests that this Court:

1. Enter judgment against Plaintiff; and
2. Provide the United States with such other relief as this Court deems just and equitable.

Respectfully submitted,

WILLIAM J. IHLENFELD, II
United States Attorney

/s/ Betsy Steinfeld Jividen
BETSY STEINFELD JIVIDEN
Assistant United States Attorney, WV Bar #3592
1125 Chapline St., P.O. Box. 591
Wheeling, WV 26003
Phone: (304) 234-0100
Fax: (304) 234-0112

IGNACIA S. MORENO
Assistant Attorney General

/s/ Amanda Shafer Berman
AMANDA SHAFER BERMAN
United States Department of Justice
Environment and Natural Resources Division
P.O. Box 7611/Washington, D.C. 20044
Phone: (202) 514-1950
Fax: 202-514-8865
Email: amanda.berman@usdoj.gov

DATED: August 20, 2012

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on Aug. 20th, 2012, I filed the foregoing Answer with the Clerk of the Court electronically. Accordingly, it is available for viewing and downloading from the ECF system. Service has been made electronically through the ECF system on counsel for Plaintiff and counsel for proposed-intervenors American Farm Bureau Federation and West Virginia Farm Bureau.

/s/ Betsy Steinfeld Jividen
Assistant United States Attorney
WV Bar #3592
United States Attorney's Office
P.O. Box 591
Wheeling, WV 26003
Phone: 304-234-0100
Fax: 304-234-0112
E-Mail: Betsy.Jividen@usdoj.gov